Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
NATIONAL SCIENCE AND TECHNOLOGY NETWORK, INC. Licensee of Private Land Mobile Radio Station WPMJ456, Glendale, California	)	FCC File No. D108068
	)	
FISHER WIRELESS SERVICES, INC. Licensee of Private Land Mobile Radio Station WPNQ697, Running Springs, California	)	FCC File No. C007248
	)	
HENRY RADIO, INC. Informal Petitions	)	
	)	
AMERICAN AUTOMOBILE ASSOCIATION Informal Complaint	)	
	)	
and	)	
	)	
MOBILE RELAY ASSOCIATES Licensee of Private Land Mobile Radio Stations WPHH415, La Crescenta, California, WPQF246, Palm Springs, California, WPQA973, Indio, California, WPPE290, Claremont, California, WPPE823, Escondido, California, WPPE824, Dulzura, California, WPPF223, Pasadena, California, and WPPF353, Poway, California	)	

ORDER OF MODIFICATION

Adopted: June 2, 2003 **Released: June 4, 2003**

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

1. *Introduction.* In this *Order of Modification*, we modify the National Science and Technology Network, Inc.'s (NSTN) license for Private Land Mobile Radio (PLMR) Station WPMJ456, Glendale, California. Specifically, we modify the license by altering its station class code from FB8 (centralized trunked)[1] to FB6 (decentralized trunked).[2] As explained in further detail below, we take this action

[1] In a "centralized trunked system," the base station controller provides dynamic channel assignments automatically searching all channels in the system for, and assigning to a user, an open channel within that system.

[2] In a "decentralized trunked system," which is also a system of dynamic channel assignment, the system continually monitors the assigned channels for activity both within the trunked system and outside the trunked system, and transmits only when an open channel is found.

pursuant to an earlier order proposing to modify NSTN's license.[3] Additionally, as a result of our action today, we are dismissing as moot a petition for reconsideration filed by NSTN on July 29, 2002[4] that seeks reconsideration of an April 6, 2001 decision of the Licensing and Technical Analysis Branch (LTAB), Public Safety and Private Wireless Division[5] denying an Informal Petition filed by NSTN contesting the validity of the captioned licenses held by Mobile Relay Associates (MRA).[6]

2. *Background*. In 1997, the Commission decided to permit centralized trunking in the PLMR bands between 150 MHz and 512 MHz.[7] The Commission emphasized that centralized trunking would be permitted only in those areas where exclusivity is recognized by the Commission or where an applicant/licensee has obtained the consent of all licensees whose service areas overlap a circle with a radius of seventy miles from the proposed trunked system's base station.[8] In 1999, the Commission provided applicants with an alternate means of obtaining an authorization for a centralized trunked system by obtaining the concurrence of any existing co-channel or adjacent channel licensee whose 39 dBu service contour (UHF) or 37 dBu service contour (VHF) is intersected by the 21 dBu (UHF) or 19 dBu (VHF) interference contour of a proposed trunked station.[9]

3. The instant matter originated on May 14, 1998, when the American Automobile Association (AAA), an FCC-certified frequency coordinator for PLMR spectrum, filed an application on behalf of NSTN to operate in the centralized trunked mode in the 450 MHz band.[10] NSTN received an authorization to operate centralized trunked Industrial/Business Station WPMJ456 on August 12, 1998.[11] Approximately three months later, on November 5, 1998, the Industrial Telecommunications Association, Inc. (ITA), another FCC-certified PLMR frequency coordinator, filed an application on behalf of Fisher Wireless Services, Inc. (Fisher), requesting authorization for Fisher to operate in the decentralized trunked mode in the 450 MHz band.[12] In November 1998, NSTN filed an "informal petition" in which it requested the deletion of frequency pairs 452.3000/457.3000 MHz and 452.6500/457.6500 MHz from Fisher's application due to the close proximity of NSTN's use of the same frequencies in its operation of

[3] *See* National Science and Technology Network, Inc., *Memorandum Opinion and Order*, 17 FCC Rcd 15728 (WTB PSPWD 2002) (*Modification MO&O*).

[4] National Science and Technology Network, Inc. Petition for Reconsideration, filed July 29, 2002.

[5] *See* Letter dated Apr. 6, 2001 from Mary Shultz, Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, Federal Communications Commission to Alan M. Lurya,.

[6] *See* Letter from Alan Lurya to Mary Shultz and Steve Linn, Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division, Federal Communications Commission, filed Jan. 26, 2001 (Informal Petition); *see also* Letter from Alan Lurya to Mary Shultz and Steve Linn, Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division, Federal Communications Commission, filed Feb. 2, 2001 (Supplement to Informal Petition).

[7] *See* Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, *Second Report and Order*, PR Docket No. 92-235, 12 FCC Rcd 14307, 14337-38 ¶¶ 56-59 (1997).

[8] *Id.*

[9] Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, *Third Memorandum Opinion and Order*, PR Docket No. 92-235, 14 FCC Rcd 10922, 10926-27 ¶¶ 6-9 (1999).

[10] *See* FCC File No. 9805D108068 (filed May 14, 1998).

[11] *Id*. (granted Aug. 12, 1998).

[12] *See* FCC File No. 9811C007248 (filed Nov. 5, 1998).

Station WPMJ456.[13] Fisher received an authorization to operate decentralized trunked Conventional Industrial/Business Station WPNQ697 on May 6, 1999.[14]

4. In response to an FCC request to investigate the frequency coordination and procedural issues surrounding the grant of the license for Station WPNQ697, ITA submitted a frequency analysis demonstrating that on virtually every frequency at each of the four base station sites authorized for Station WPMJ456, there were multiple incumbent co-channel or adjacent channel licensees located within seventy miles of NSTN's base stations.[15] ITA contended that no engineering analysis was performed to confirm the necessary compliance with the Commission's distance separation rules and that the application lacked the necessary letters of consent from co-channel and adjacent channel incumbents.[16] As a result, ITA opined that Station WPMJ456 should never have received an "YG" (trunked) license.[17]

5. On February 10, 2000, MRA, licensee of several PLMR stations located in the Los Angeles, California area, filed a letter in support of ITA's suggestion to modify the license for Station WPMJ456, stating that NSTN's license had been obtained through an "improper, defective coordination,"[18] as MRA had three co-channel applications pending before the Commission at the time NSTN's application was coordinated by AAA.[19] MRA noted further that the pendency of its applications should have prohibited AAA from coordinating any conflicting applications.[20]

6. On June 26, 2000, LTAB requested that AAA demonstrate the sufficiency of the frequency coordination conducted for Station WPMJ456.[21] The Branch sent AAA a copy of the ITA analysis and instructed AAA to provide a copy of the letter of consent from each licensee referenced in ITA's analysis, as well as an engineering study showing compliance with Section 90.187 of the Commission's Rules.[22] The Branch noted that although AAA indicated that it does not maintain frequency coordination records,[23] Section 90.187(b)(2)(v) of the Commission's Rules requires trunked licensees to maintain letters of consent and to provide copies to the FCC upon request.[24] LTAB further noted that if AAA's coordination

[13] Henry Radio Informal Petition, dated November 25, 1998.

[14] *Id*. (granted May 6, 1999).

[15] *See* Letter dated June 16, 1999 from Mark E. Crosby, President/CEO of ITA, to Eric Smith, Commercial Wireless Division, Wireless Telecommunications Bureau, Federal Communications Commission at 1 (ITA Frequency Analysis); *Modification Order*, 17 FCC Rcd at 15731 ¶ 8.

[16] ITA Frequency Analysis at 1-2.

[17] *Id*.

[18] *See* Letter dated Feb. 10, 2000 from David J. Kaufman, counsel to Mobile Relay Associations, Inc., to Herb Zeiler, Deputy Chief, Public Safety and Private Wireless Division (MRA Letter).

[19] *See* FCC File Nos. D103740, D104462, and D107518 (subsequently granted respectively under Call Signs WPPE290, WPHH415, and WPPF223).

[20] MRA Letter at 1.

[21] *See* Letter dated Jun. 26, 2000 from Steve Linn, Deputy Chief, on behalf of Mary Shultz, Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, to Elizabeth Sachs, counsel to Fisher Wireless Services, Inc. (LTAB Letter).

[22] *Id*. at 1.

[23] *See* Letter dated Nov. 15, 1999 from Michele C. Farquhar, counsel to the American Automobile Association, to Ronald B. Fuhrman, Deputy Chief, Technical Analysis Section, Commercial Wireless Division.

[24] LTAB Letter at 1 n.1.

of Station WPMJ456 was proven to be valid, LTAB could dismiss ITA's objection.[25] Otherwise, LTAB would "institute a license modification proceeding" regarding Station WPMJ456.[26]

7. On July 21, 2000, AAA responded to LTAB's June 26, 2000 inquiry relating to its frequency recommendation for Station WPMJ456.[27] Rather than supplying the requested information, AAA took the position that it was "unreasonable" to ask it to recreate the "state of affairs" that existed in 1997 or 1998.[28] AAA again stated that it does not retain engineering data on applications it coordinates beyond the date the FCC grants become final, and argued that the thirty-day period that coordinators and licensees are given in which to protest the grant of an authorization elapsed two years earlier.[29] Attached to AAA's July 21, 2000 letter is a letter from Fisher stating that it had ceased transmission on frequency pair 452.6500/457.6500 MHz. Fisher requested "that the frequency pair be held in abeyance pending a final resolution of the dispute regarding the underlying coordination process."[30]

8. On January 26, 2001, NSTN filed an informal petition requesting that the Commission cancel eight stations licensed to MRA for "causing harmful co-channel interference to the users of [NSTN's] FB-8 [sic] YG trunked stations."[31] LTAB dismissed that petition on April 6, 2001, on the grounds that the application for trunked operation on Station WPMJ456 should never have been filed.[32] LTAB also noted that over a year had passed since the grant of the MRA licenses, and that NSTN had not provided any technical evidence to support its claim that MRA's licenses conflict with any of the Commission's Rules.[33] On July 29, 2002, NSTN filed a petition seeking reconsideration of LTAB's April 6, 2001 dismissal.[34]

9. In the *Modification MO&O*, we concluded that the original NSTN application should not have been coordinated or granted because it did not provide the requisite interference protection to several existing stations and pending applications.[35] We also specifically concluded that AAA's coordination of NSTN's application for centralized trunked operations was defective.[36] While former Section 90.187(b)(2) required the written consent from licensees whose stations were located within seventy miles of Station WPMJ456, there is no record that any of the required consents were obtained.[37] Finally, we

[25] *Id*. at 1-2.

[26] *Id*.

[27] *See* Letter dated July 21, 2000 from Gary Ruark, Frequency Coordinator, Automobile Association of America, to Mary Shultz, Chief, Licensing and Technical Analysis Branch, Public Safety & Private Wireless Division, Wireless Telecommunications Bureau.

[28] *Id*. at 2.

[29] *Id.*

[30] *Id*. at Attachment 1.

[31] Informal Petition at 2. The eight call signs were WPHH415, WPQF246, WPQA973, WPPE290, WPPE824, WPPF223, WPPF353, and WPPE823.

[32] *See* Letter dated Apr. 6, 2001 from Mary Shultz, Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, Federal Communications Commission to Alan M. Lurya.

[33] *Id*.

[34] National Science and Technology Network, Inc. Petition for Reconsideration (filed July 29, 2002).

[35] *Modification MO&O*, 17 FCC Rcd at 15734 ¶ 16.

[36] *Id*. at 15734 ¶ 17.

[37] *Id*. at 15734 ¶ 16.

found that AAA's explanation of its frequency coordination for WPMJ456 was insufficient to counter the weight of the ITA analysis.[38] Accordingly, we proposed to modify NSTN's license by changing its station class code from a centralized trunked station (station class FB8) to a decentralized trunked station (station class FB6). In addition, we dismissed several informal petitions filed by NSTN against Fisher's license as moot, because the complaints were based upon Station WPMJ456's status as a centralized trunked station.[39] On September 9, 2002, NSTN filed a petition protesting the proposed license modification.[40]

10. *Discussion.* In its Protest, NSTN makes two arguments as to why the license for Station WPMJ456 should not be modified.[41] First, NSTN claims that the frequency coordination performed for the application for Station WPNQ697 was "improper due to the congestion of the relevant frequencies."[42] Second, NSTN points to its reliance on the Commission's grant of its license and states that it "will suffer grievous injury as a result of any change in status of the license."[43] Neither of these arguments persuades us that the NSTN license for Station WPMJ456 should retain its centralized trunked (FB8) status.

11. NSTN spends considerable time discussing why the license for MRA's Station WPHH415 was granted in error due to the fact that "the most appropriate frequencies were not recommended for MRA."[44] NSTN then attempts to link the allegedly improper grant of Station WPHH415 to the instant case by stating that

> [a]s MRA's station WPHH415 was improperly coordinated, the coordination of Fisher's station WPNQ697 was likewise improper due to congestion of the relevant frequencies. Neither Fisher nor MRA should have been granted licenses because of the volume of the existing traffic on the channels. Thus, the grant of NSTN's license for station WPMJ456 was not *per se* improper.[45]

12. There are several problems with this argument. First, NSTN provides no legal basis for its contention that the frequency coordinations performed for Stations WPNQ697 and WPHH415 were improper. It also fails to make any technical showing in support of its argument except to assert that it had loaded the channels with 90-125 mobile units and consequently, the channels were fully occupied.[46] In this connection, we agree with MRA that loading does not confer exclusivity in the 450-470 MHz band, and that NSTN has not established that these frequency coordinations were defective.[47] In addition, as MRA notes, while NSTN argues that the coordinators did not select the most appropriate frequency for

[38] *Id*.

[39] *Id*. at 15734-35 ¶¶ 18-19.

[40] National Science and Technology Network, Inc. Protest of Proposed License Modification, filed Sept. 9, 2002 (Protest). Subsequent filings were made by MRA and NSTN. *See* Mobile Relay Associates Opposition to Protest of Proposed License Modification, filed Sept. 24, 2002 (MRA Opposition); *see* National Science and Technology Network, Inc. Reply, filed Oct. 4, 2002.

[41] Protest at 4.

[42] *Id*. at 5.

[43] *Id*. at 6.

[44] *See id*. at 2-5.

[45] *Id*. at 5.

[46] *See id.* at 5.

[47] MRA Opposition at 4.

Fisher and MRA,[48] NSTN has not identified a more appropriate frequency.[49] Second, even assuming NSTN's argument is valid, *i.e.*, the frequency coordinators did not choose the most appropriate frequencies for Stations WPNQ697 and WPHH415 and the applications, therefore, should not have been granted, it fails to address our conclusion in the *Modification MO&O* that NSTN's station was *itself* improperly granted.[50] Further, even assuming *arguendo* that the coordinations were improper, NSTN was still obligated to obtain the consent letters required by the Commission's Rules or show that the requisite interference protection was afforded to existing licensees until such time as those licenses were modified or cancelled.[51]

13. In addition, we find that NSTN's second argument—that it will suffer "grievous injury" as a result of the proposed license modification—does not outweigh the benefits resulting from the proposed modification.[52] While we do not dispute that NSTN may suffer hardship from losing its centralized trunked status for Station WPMJ456, the fact remains that its underlying application should not have been granted. Given this fact, as well as our conclusion that the licenses for Stations WPNQ697 and WPHH415 were not granted in error, it is more equitable to modify NSTN's license than it would be to completely bar Fisher and MRA from operating on the subject frequencies. Furthermore, we note again that there have been several opportunities for the interested parties to demonstrate that Station WPMJ456 was properly coordinated, but this simply has not occurred. In light of these circumstances, we view the modification of Station WPMJ456 as the best means of serving the public interest at this time.

14. Finally, we address NSTN's claim that we should delay the resolution of this case until we have acted on its July 2002 petition for reconsideration in another proceeding,[53] where NSTN has requested reconsideration of a decision by LTAB denying an NSTN informal petition. In that proceeding, NSTN essentially argues that several of MRA's licenses should be revoked because they do not offer adequate protection to the centralized trunked operations of Station WPMJ456.[54] NSTN believes that "a favorable outcome in that matter could have decisional influence in the instant case."[55] To the contrary, our decision today renders the WPHH415 petition for reconsideration moot, because Station WPMJ456 no longer has centralized trunked status and consequently must share the relevant frequencies with other licensees.[56] Consequently, we will dismiss the petition for reconsideration.

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[48] Protest at 4-5.

[49] MRA Opposition at 5.

[50] *Modification MO&O*, 17 FCC Rcd at 15734 ¶ 17.

[51] Indeed, aside from Fisher and MRA, it appears that NSTN should have acquired consent letters from several additional licensees identified in ITA's Frequency Analysis.

[52] Protest at 6-7. NSTN also argues that the proposed modification is not in the public interest because it has not received any complaints of interference. *Id*. at 5-6. First, we disagree with NSTN's suggestion that its license should not be modified until its operations disrupt another licensee's communications. *See* California Metro Mobile Communications, Inc., *Memorandum Opinion and Order*, 17 FCC Rcd 22974, 22975 ¶ 11 (WTB PSPWD 2002). Moreover, while NSTN may not have received any complaints, as recited above and in the *Modification MO&O*, we have received considerable correspondence regarding Station WPMJ456.

[53] Protest at 2; National Science and Technology Network, Inc. Petition for Reconsideration, filed July 29, 2002.

[54] *See, e.g.*, Letter from Mary Shultz, Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, Federal Communications Commission to Alan M. Lurya, dated Apr. 6, 2001; National Science and Technology Network, Inc. Petition for Reconsideration, filed July 29, 2002.

[55] Protest at 2.

[56] In any event, as discussed above, we do not believe that NSTN has shown that the frequency coordinations performed for Stations WPHH415 and WPNQ697 were defective.

15. *Conclusion*. Based on the record in this matter, we conclude that it would be in the public interest to modify NSTN's license for Station WPMJ456, Glendale, California by altering its station class code from FB8 (centralized trunked) to FB6 (decentralized trunked). In addition, we dismiss as moot NSTN's petition for reconsideration of LTAB's denial of NSTN's informal petition to deny MRA's application for a license to operate Station WPHH415.

16. ACCORDINGLY, IT IS ORDERED, pursuant to Sections 4(i) and 316(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 316(a), and Section 1.87 of the Commission's Rules, 47 C.F.R. § 1.87, that the license for Private Land Mobile Radio Station WPMJ456 IS MODIFIED by changing the station class code from FB8 to FB6.

17. IT IS FURTHER ORDERED that this *Order of Modification* shall be sent by certified mail, return receipt requested to John A. Prendergast, Blooston, Mordkofsky, Dickens, Duffy & Prendergast, 2120 L Street, NW, Suite 300, Washington, DC 20037, as counsel for National Science and Technology Network, Inc.

18. IT IS FURTHER ORDERED that the petition for reconsideration filed by the National Science and Technology Network, Inc. on July 29, 2002, IS DISMISSED AS MOOT.

19. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry
Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau